### Wyoming October Report.

Dr. S. B. Miller, secretary of the Wyoming Board of Medical Examiners, reports the written examination held at Laramie, Oct. 14-16, 1908. The number of subjects examined in was 10; total number of questions asked, 100; percentage required to pass, 75. Only one candidate, a graduate of Trinity College, Ontario, 1887, appeared for examination and he passed with a grade of 88.3 per cent.

## Medicolegal

### New and Forceful Arguments Against Courts Having Inherent Power to Require Submission to Physical Examinations Before Trial.

The Supreme Court of Utah says, in Larson vs. Salt Lake City, that, on the question of the inherent power of a trial court to require the plaintiff in a personal injury case to submit to a physical examination before trial by a physician appointed by the court and, for a refusal to comply with the order to dismiss his case, the authorities are in hopeless conflict.

The courts asserting the power have quite generally held that the defendant has not the absolute right to the order, but that the motion therefor is addressed to the sound discretion of the court, and that the application should be made before entering on the trial; that the defendant has not the right to designate the physician by whom the examination is to be made, but that the examination should be ordered and conducted under the direction of the court whenever it fairly appears that important facts concerning the injury are only to be disclosed by such an examination, and that it may be made without injury to the plaintiff's health, or the infliction of serious pain, or indignity to, or an unreasonable or indecent exposure of, his person; and that while the court has no right, in the enforcement of the order, to compel the plaintiff to actually submit to the examination, the court may nevertheless, on the plaintiff's refusal to do so, dismiss the case or delay the proceeding until he complies with the order, or the court may decline to permit any evidence to be given to establish the injury. A few courts have held that, on a plaintiff's refusal to comply with the order, the court may punish him as for a contempt.

In many cases where courts have asserted the power it will be seen that the existence of the power was either assumed or merely asserted. In others, the courts, instead of discussing the source of the power, or undertaking to state by what authority such a power is exercised, have undertaken to give reasons why trial courts ought to have such a power, and why it ought to be exercised by them. The same thing is true of some text-writers.

Whenever the power of a court is invoked, in order that it may be lawfully exercised, it is essential to point to some constitutional provision or some legislative enactment or the common law authorizing it—not necessarily to some express provision or enactment, but to some provision where the right to exercise the power invoked is fairly implied, or where it may be necessarily inferred from the nature and constitution of the tribunal itself. But it was conceded in this case, and it has been many times declared by the courts asserting the power, as well as by the courts denying it, that there is no common-law precedent where such action of the court as here in question was ever exercised by law courts.

There can be no doubt that, in the absence of a statute, a law court is not authorized to compel a plaintiff, before trial, to appear before a notary public, or a commissioner appointed by the court, and there make answer to pertinent interrogatories propounded to him concerning his injuries, or concerning any other material issue in the case. If a statute is necessary to confer such a power on the court, this court does not see from what source it obtains the power to compel the plaintiff before trial to submit his person to a physical examination, and make answers to proper questions propounded to him by the physician making the examination. Or, if a statute is necessary to authorize a court to order an inspection and examination of property before trial, the court sees no good reason why a statute is not likewise necessary to authorize the court to compel a plaintiff in a personal injury case to submit his person before trial to a physical examination. The fact that a party having peculiar knowledge of a matter fails to bring it forward may raise a presumption or justify an inference in favor of his adversary's claim; or, if he withholds certain evidence with respect thereto, the inference may be justified that, if it had been produced, it would have been unfavorable to his case, but it furnishes no basis authorizing the court to make an order requiring him to divulge his knowledge before trial to his adversary, or to supply him with the means of obtaining it.

Furthermore, the power of the court to compel the plaintiff, in advance of the trial, to submit to a physical examination, in order that the defendant may ascertain the extent and character of the injuries and thus qualify witnesses, who may testify concerning them, is one thing. The power of the court, when the plaintiff has testified concerning his injuries, to compel him to exhibit the injured parts to the jury, when to do so does not involve an indecent exposure, is quite another and different thing.

If a plaintiff testifies concerning a wound on his arm, he may, in corroboration of his testimony, exhibit the wound to the jury. He may likewise be required to do so, at the request of the defendant, as a part of the cross-examination and as affecting the plaintiff's testimony. Though the plaintiff does not take the stand, but evidence has been given on his behalf concerning his injuries, he may nevertheless be called by either party and required in a proper case to exhibit the injured parts as corroborating or affecting the testimony which has been given concerning the injuries.

It may be asked why has not the court power to compel a physical examination in advance of the trial, but has power to compel the plaintiff to exhibit his wounds and injuries to the jury at the trial? The answer is simple. It is for the same reason that courts of law could not compel the inspection or production of private papers or documents in the possession or under the control of a litigant, but, if he came into court with the document or paper about him, the court could compel him to produce it. In the one instance the power to compel one suitor before trial to arm his adversary against himself or to furnish him evidence to enable him to maintain or defend his cause was not recognized; in the other, the right of each suitor was recognized to call any person possessed of facts as a witness, and to interrogate him concerning them. The plaintiff may be a witness in his own behalf. He may also be called as a witness on behalf of the defendant. He may be interrogated by either party concerning any fact within his knowledge. If he testifies concerning his injuries and is asked by either party to exhibit the injured parts to the jury, he, when the disclosure does not involve an indecent exposure, may not, any more than a witness on the stand who has been ordered by the court to produce a document in his pocket, decline to do so. The power which a court has to compel a witness to answer all proper questions propounded to him may also be exercised to compel the plaintiff to exhibit the wound or injury of which he testifies for the purpose of affecting his testimony. But to say that the plaintiff shall submit his person to a physical examination, in advance of the trial, in order that those examining him may become qualified as witnesses and be put in possession of facts theretofore unknown to them, is quite another and different thing.

### Damages Recoverable for Miscarriage Caused by Injury.

The Supreme Court of Minnesota says, in the personal injury case of Morris vs. St. Paul City Railway Co., that at the time of the accident Mrs. Morris was pregnant, and the injury resulted in a miscarriage. The defendant company asked the court to instruct the jury that "damages in this case must be limited to such physical pain and suffering as was the direct result of the accident, independent of the question of the condition of pregnancy claimed on the part of the plaintiff," and that, "if you should find from the evidence that the act complained of was negligent, and that the accident resulted in a miscarriage, the damage resulting therefrom must be limited

to such damages for such suffering and pain as the plaintiff suffered in addition to what she would have suffered and endured had she carried the child to the full period. If it should appear that there was an increased or aggravated mental or physical pain and distress in connection with such miscarriage, in addition to what the mother would have suffered if the child had been born at the proper time, or that her health had been impaired thereby, then she would be entitled to recover for such additional pain and suffering as she endured, in addition to what she would have endured as a consequence of her condition. If you find from the evidence that she did not suffer any additional pain from the miscarriage over what she would have suffered, had she borne the child at the expiration of the period at the proper time, then she is not entitled to recover anything for the miscarriage."

But the rule of damages for which the defendant company contended, the Supreme Court says, finds no support in the cases, and is, in the court's judgment, unsound in principle. It is advanced by Joyce in his work on damages (section 185), but is not supported by the citation of any authority.

At the time of this accident Mrs. Morris was pregnant, but she was in a natural and normal condition of health. The miscarriage resulted from the negligent act of the defendant company, and it should be required to pay the damages which resulted naturally and directly from its negligent acts. The fact that Mrs. Morris would, in the natural course of events, suffer more or less pain and anguish at the birth of her child, could not be properly taken into consideration. It was too remote, speculative, and uncertain to be taken as a basis for estimating damages. Her possible future suffering had no connection whatever with the suffering which resulted from the negligent act of the defendant company.

In other words, the court holds that when an injury to a woman results in a miscarriage she is entitled to recover such damages as will fairly compensate her for the pain and suffering occasioned by the miscarriage, but not for the pain and suffering occasioned by the loss of the child. The pain and suffering which the mother would have suffered when the child was born in the natural course of events can not be deducted from the pain and suffering occasioned by the miscarriage, which resulted from the defendant's negligence.

The verdict in this case, for $4,000, the court says was large; but, in view of the nature of the injuries and the impossibility of measuring the damages in such a case by any exact rule, the court can not say that it was so large as to suggest that it was the result of passion and prejudice on the part of the jury.

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# Current Medical Literature

## AMERICAN.

Titles marked with an asterisk (*) are abstracted below.

### Boston Medical and Surgical Journal.

*November 26.*

1 *Relation Between Human and Animal Tuberculosis with Special Reference to the Question of the Transformation of Human and Other Types of the Tubercle Bacillus. T. Smith, Boston.
2 *Certain Evil Tendencies in Medicine and Surgery. M. H. Richardson, Boston.
3 *Comparative Value of Change of Climate and of Treatment in Sanatoria Near at Hand in Cases of Pulmonary Tuberculosis. C. E. Edson, Denver.
4 Sporadic Trichinosis: with Report of Case. W. R. Steiner, Hartford, Conn.
5 Bursitis Subacromialis, or Periarthritis of the Shoulder-Joint (Subdeltoid Bursitis.) (Continued). E. A. Codman, Boston.

1. Abstracted in THE JOURNAL, Oct. 10, 1908, p. 1259.

**2. Evil Tendencies in Medicine and Surgery.**—Richardson is struck by the widespread tendency at present toward hasty and ill-considered diagnosis, as contrasted with the thoroughness displayed in the clinical reports published in 1828 and 1829. He complains of the resort to the knife as the first step rather than the last, that makes, in his opinion, one of the most prolific of the evil tendencies of the time. The results of incomplete study are seen in those operations, which through either incorrect diagnosis or ill-considered indications, prove their own uselessness. He discusses wherein adequate study lies, and—contrary to the usual opinion, that facts are correctly observed, but conclusions drawn are not logical deductions—he believes that, as a rule, the conclusions are correctly drawn, but the observations themselves are incorrect. The extremeness of radical surgery—and this is sometimes more pronounced in strictly medical men than in surgeons—is exemplified by a case of an obscure swelling of the whole right lower extremity, in which the physician proposed, and this to the patient, not the surgeon, that the femoral vein should be cut down on and the thrombus removed. This, Richardson refused to do, as having nothing in common sense, practice, experience or experimentation, to commend it. While realizing that great advances in surgery have been made in the face of bitter, and as we now know unreasonable, opposition, Richardson defends this opposition as essential to wise and sure progress. If the example of McDowell had encountered no opposition there would have been an awful mortality and the progress of modern ovarian surgery would have been set back 100 years. He protests against the tendency toward operative diagnosis as tending to make ordinary diagnosis slipshod and inaccurate.

### Medical Record, New York.

*November 28.*

6 *Differentiation of Outbreaks of Typhoid Due to to Infection by Water, Milk, Flies and Contacts. J. F. Anderson, Washington, D. C.
7 Rocky Mountain Spotted Fever. A. A. Robinson, Ogden, Utah.
8 Impressions Derived from a Visit to the Warm Springs of Virginia. A. H. Buck, New York.
9 Cholecystitis, with Suggestions for Prevention of Gallstones. H. W. Bettmann, Cincinnati.
10 Case of Syringomyelia. L. S. Manson, New York.

3. Abstracted in THE JOURNAL, Oct. 10, 1908, p. 1254.

**6. Differentiation of Typhoid Outbreaks.**—Anderson lays down the following characteristics of outbreaks of typhoid due to water:

1. General distribution of cases throughout the areas supplied by a particular water.
2. Explosive onset of the outbreak.
3. Seasonal prevalence; spring or late winter.
4. Comparative freedom from the disease of persons not using the suspected water.
5. Inspection of the watershed shows evident sources of infection.
6. The outbreaks may have begun or ended following a change of the water supply.
7. Bacteriologic and chemical examination reveals evidences of pollution.
8. Exclusion of all other probable causes.

The following points indicate strongly that the infection is being introduced through the milk:

1. Sudden outbreak of an unusual number of cases followed by a rapid decline.
2. The appearance of an unusual number of cases among the customers of a certain dairy.
3. Unusual incidence of cases among users of milk.
4. More cases among the well-to-do than among the poor.
5. The finding of the typhoid bacillus in the suspected milk.

The chief characteristics of outbreaks of typhoid due to transmission by flies and by contact are their local character, their appearance in places where the sanitary conditions are poor or where they are neglected, occurring during the fly season, in the case of fly transmission and among those most closely associated with the patient. There have been reported in the literature many interesting outbreaks of typhoid due to conveyance of the infection by oysters and other shellfish, fruits, vegetables, ice cream, watercress, celery, ice, etc.

### New York Medical Journal.

*November 28.*

11 *The Red Cross in the Antituberculosis War. S. A. Knopf, New York.
12 *International Classification as Applied to Morbidity Returns. C. F. Mason, Washington, D. C.
13 At What Age Periods and in What Measure Has the Reduction in the Mortality Rate from Tuberculosis Manifested Itself in the City of New York During the Past Forty Years? W. H. Guilfoy, New York.
14 *New Method for the Transfusion of Blood. R. T. Frank, New York.
15 *The Public Health Plank. C. E. Wood, Chicago.
16 *Iron (Concluded). J. Knott, Dublin, Ire.
17 Adiposis Dolorsa with Involvement of Large Nerve Trunks. P. N. Bergeron, Philadelphia.

**11. Antituberculosis War.**—Knopf describes the work done by the German Red Cross in the fight against tuberculosis